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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 12th February 2008

No. 1598—li/1(B)-23/2008-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 29th September 2007 in Industrial Dispute Case No. 34/1998 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the management of M/s. Kurlon Ltd., Bhubaneswar and its workman Aruna Kumar Dey, Electrician was referred for adjudication is hereby published as in the Scheduled below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 34 OF 1998

Dated the 29th September 2007

Present :

Shri S. K. Mohapatra, o.s.J.s. (Jr. Branch)
Presiding Officer, Labour Court
Bhubaneswar.

Between :

The management of	.. First Party—Management
M/s. Kurlon Ltd., Bhubaneswar.	
And	
Its workman	.. Second Party—Workman
Shri Aruna Kumar Dey	

Appearances :

Shri Sanjay Mishra, Advocate	.. For First party—Management
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Shri B. C. Bastia, Advocate	.. For Second party—Workman

AWARD

The Government of Orissa in the Labour & Employment Department referred the present dispute between the management of M/s. Kurlon Ltd., Bhubaneswar and its workman Shri Aruna Kumar Dey under Notification No. 5323/LE., dated the 18th May 1998 vide Memo. No. 6648(5)/LE., dated the 1st July 1998 for adjudication by this Court.

2. The terms of reference by the State Government is as follows :

“Whether the action of the management of M/s. Kurlon Ltd., B-88, Chandaka N. I. Complex, Patia, Bhubaneswar in terminating the services of Shri Aruna Kumar Dey, Electrician, by way of dismissal with effect from the 18th October 1996 is legal or justified ? If not what relief Shri Dey is entitled to ?”

3. Shorn of all unnecessary details the case of the workman is as follows :

The Management Company had employed the workman as an Electrician in its factory M/s. Kurlon Ltd., Bhubaneswar since January, 1994. The workman was working in the organisation continuously and sincerely. There was no stigma of any kind against him during his service career except the false allegations raised by the management before dismissal of the workman from his service with effect from dated the 18th October 1996. On the 24th April 1996 the management framed a charge against the workman on basis of some false and concocted allegations and directed him to submit his explanation. The workman submitted his explanation on the 15th May 1996. The management not being satisfied with the explanation offered by the workman appointed one Enquiry Officer and one Presenting Officer who were both legally trained persons for the purpose of domestic enquiry into the charges against the workman. The workman and his Co-worker who were allowed to represent the workman during the enquiry did not have any legal knowledge and therefore, they were not able to defend the case of the workman properly during the domestic enquiry. The witnesses examined in the enquiry were all employees of the management. The workman and the co-worker not been legally trained could not cross examine the witnesses properly. During domestic enquiry the workman was not allowed to be represented by legal practitioner to defend his case and therefore, there was violation of the principles of natural justice. The entire enquiry was conducted at the instance of the management and it was not fair and proper. The workman had not been given reasonable opportunity to defend his case. Copies of the statements of the witnesses were not given to the workman on the very same day on which witnesses were examined but such copies were given along with the enquiry report only. The statement of witnesses were changed to suit the requirement of the management. The Enquiry Officer being an outsider had a partisan attitude as against the workman and in favour of the management. The Charge Nos. 2, 3, 4 and 5 were consequential action to Charge No. 1. The Charge No. 1 was regarding alleged late attendance of the workman in his duty after the lunch break. During the enquiry the Charge No. 1 was not proved but surprisingly the workman was found guilty of the Charge Nos. 2, 3, 4 and 5. After the domestic enquiry the Enquiry Officer found the workman guilty of the charge and thereafter the workman was dismissed from his service with effect from the 18th October 1996. The punishment of dismissal from service was out of proportion. The entire enquiry proceeding was vitiated. On these averments the workman has claimed his reinstatement in service with full back wages.

4. The management in its written statement has contended that the workman was incorrigibly indisciplined and his career was thoroughly tainted by the time when the domestic enquiry was held against him on serious charges. The domestic enquiry was fair and proper and all reasonable opportunities had been given to the workman to defend himself. The Administrative Manager who represented the management in the enquiry has no law qualification and therefore, it is completely incorrect to say that the said Administrative Manager was an expert in industrial law. Further more, the Enquiry Officer was a Lawyer of the lower court and therefore, it is incorrect on the part of the workman to say that it was unfair not to allow him services of an advocate to defend himself during the domestic enquiry. A domestic enquiry from its very nature was not a judicial proceeding and therefore whatever the knowledge the workman possesses is considered as adequate for his defence. The ratio of the case Dillip Kumar Raghvendra Nadkarni is not at all applicable to the present case as because Mr. Balan the Administrative Manager was not a legally trained person. The workman had made an undue request for appointment of an advocate for his defence and the same was rightly rejected. During the enquiry the workman had been assisted by one of his co-worker which is in accordance with the principles of natural justice. The management had followed the principles of natural justice scrupulously and no objection had been raised by the workman during the domestic enquiry regarding participation of Mr. Balan to assist the management or regarding the appointment of Mr. Rath an Advocate as the Enquiry Officer. All reasonable opportunities had been given to the workman to defend himself. There is no legal bar for an outsider to be appointed as an Enquiry Officer and on the other hand an outsider is bound to be impartial during the domestic enquiry and being a Lawyer such Enquiry Officer is always independent and impartial and therefore, there is nothing objectionable to appointment of an Advocate as Enquiry Officer. During the entire enquiry the workman had been given proper opportunity to defend himself and throughout principles of natural justice was duly followed. The Enquiry Officer found the workman guilty of serious charges and submitted his report accordingly and thereafter the disciplinary and punishing authority imposed the punishment of dismissal on the workman which the workman rightly deserved having regard to the charges established against him. The workman has come up with false allegation against the management and against the domestic enquiry in order to get undue sympathy from the court. The management has contended that the termination of service of the workman was legal and justified and the workman is not entitled to any relief whatsoever.

5. On the aforesaid pleadings of the parties, the following issue have been framed for determination.

ISSUES

- (i) Whether the domestic enquiry conducted against the workman was just and proper ?
- (ii) Whether the action of the management of M/s. Kurlon Ltd., B-88, Chandaka, N. I. Complex, Patia, Bhubaneswar in terminating the services of Shri Aruna Kumar Dey, Electrician, by way of dismissal with effect from dated the 18th October 1996 is legal or justified ?
- (iii) If not what relief Shri Dey is entitled to ?

6. Issue No. (i) : In the instant case the management had conducted a domestic enquiry regarding the charges against the workman. The management prior to initiation of the domestic enquiry had supplied a copy of the charge sheet to the workman vide Ext. D and intimated him regarding appointment of Shri P. C. Rath, Advocate as the Enquiry Officer and Shri N. S. Balan, Administrative Manager of the management as the Presenting Officer, vide Ext. E. Since the workman has challenged the fairness of the domestic enquiry, it is of paramount importance to examine whether the domestic enquiry conducted against the workman was fair and proper and as to whether the workman had been given due opportunity to defend himself. The Enquiry Officer was an outsider and he being an advocate was definitely an independent person and therefore, the fact that the Enquiry Officer himself was a law knowing officer does not effect the fairness of the enquiry in any manner. Rather an advocate being law knowing and being acquainted with the procedures of the enquiry and being an independent person is expected to conduct the enquiry in fair, proper and impartial manner. The allegation of the workman that the Presenting Officer was law knowing having qualification in law is a baseless allegation. It is available from the evidence of M. W. 1. the Presenting Officer that he is not qualified law. In this evidence M.W.1. has categorically stated that he is only a graduate in Arts. The workman has not tendered any evidence whatsoever to show that the M.W.1. was in any way qualified in law or that he was in any manner an expert in Labour and Industrial Law. In absence of any such evidence the ratio decided in the case of THE BOARD OF TRUSTEES OF THE PORT OF BOMBAY V. DILIP KUMAR RAGHAVENDRANATH NADKARNI AND OTHERS (SCLJ 1950-83-674) is not at all applicable to the present case at hand. The mere fact that M.W.1. being an Administrative Manager of the management company in his capacity as such looks after the administration of the company and also deals with disciplinary proceeding by itself can not make him a person qualified in law, much less an expert in labour and industrial law. Therefore, the argument of the workman basing on the ratio decided in the case Board of Trustees v. D. R. Nadkarni (Supra) can not be accepted in the facts and circumstances of the present case which is quite distinguishable from the D. R. Nadkarni case.

It is available from the evidence of M. W. 1. as well as from the evidence of the workman himself that during domestic enquiry charge sheet vide Ext. D had been supplied to him and he had been duly intimated regarding appointment of the Enquiry Officer and the Presenting Officer, vide Ext. E. The enquiry proceeding Ext. F clearly shown that the Enquiry Officer conducted the enquiry without any bias and afforded all possible opportunities to the workman to defend himself. The evidence of the workman in the instant case is that he had received notice to be present during the domestic enquiry and that during the entire domestic enquiry he was all along present. Further evidence of W. W. 1. is that on the 27th May 1996 the Enquiry Officer read over and explained the charges to him and that the Presenting Officer on the said date had furnished the list of documents and witnesses relied upon by the management during the enquiry. In his evidence W. W. 1. has further stated that during the enquiry he wanted to be assisted by an Advocate but the same was refused and he was allowed to take assistance of one of his co-worker namely Bhagyadhar Beuria who was an active member of the Worker's Union. It is never the requirement of any law that during domestic enquiry a workman is to be assisted by an Advocate because domestic enquires are not judicial proceeding. In the instant case the workman was duly assisted by his co-worker who was an active member of the Worker's Union. Further evidence of W. W. 1. is that the said Bhagyadhar Beuria used to assist many workers previously during the enquiry on different occasions. In his evidence W. W. 1. has further admitted that he had cross examined all the witnesses who

gave evidence during the enquiry from the side of the management and that Shri Beuria had assisted him during cross examination of all the said witnesses. In his evidence W. W. 1. has further stated that the Enquiry Officer had granted him all adjournments sought for by him and that the Enquiry Officer had permitted him to adduce evidence in his defence. According to W. W. 1. he had signed on all depositions during the enquiry and that his co-worker Shri Beuria had signed on each page of deposition and on each page enquiry proceeding. It is further available from the evidence of the workman W.W.1. that during the enquiry all the witnesses deposed in Oriya and that he fully understood what each of the witnesses said during their respective depositions and that he had cross examined them accordingly. Although in the instant case the workman has taken a stand that he was not being supplied the copies of evidence of witnesses during the enquiry proceeding, such stand is refuted by the management. The workman has not proved any document to show that during the enquiry proceeding he had raised any such objection to the management or to the Enquiry Officer regarding non-receipt of copies of proceedings or depositions. Since the workman himself in his evidence has stated that all the witnesses during the enquiry deposed in Oriya and that he understood what the witnesses had said and cross examined them accordingly and that his co-worker who is an experienced Trade Unionist assisted him during cross examination of each of the witnesses and further that the workman and his co-worker signed on all such proceedings during enquiry shows that the Enquiry Officer conducted the enquiry in a fair and proper manner and even if it is admitted that copies of depositions of witnesses were not supplied to the workman on the very day of the enquiry it had not caused any prejudice to the workman and therefore, the domestic enquiry can not be said to have been vitiated on that count. After conclusion of the enquiry the enquiry proceeding and the enquiry report were duly supplied to the workman vide Exts. 5 and 6 and the workman was called upon to submit his objection to the enquiry report which the workman submitted vide his objection Ext. J and thereafter a show cause notice was duly issued to the workman vide Ext. K. Ext. 10 is the second show cause notice issued to the workman before the punishment was inflicted on him. Ext. 11 is the order of dismissal served on the workman.

When the workman raised objection to the authenticity of the enquiry report the original enquiry report was called for and the same was proved by the management as Ext. 18 and the signature of the Enquiry Officer was proved as Ext. 18/a. Ext. 17 is the xerox copy of the forwarding letter of the Enquiry Officer under which he sent the enquiry report Ext. 18 to the management and Ext. 17/a is the signature of the Enquiry Officer on Ext. 17. Ext. 18/a is the signature of the Enquiry Officer on Ext. 18 which is the original enquiry report. Both the signatures of the Enquiry Officer vide Ext. 17/a and Ext. 18/a tally with each other and are similar. Therefore, there is no force in the allegation of the workman that the enquiry report had been manufactured in any manner. It is important to note that during pendency of the present proceeding (case) the Enquiry Officer died on the 11th February 2000 as seen from the death certificate Ext. 19 and therefore the management could not examine the Enquiry Officer himself. On the other hand, the M.W.1. who was present during the enquiry as the Presenting Officer all along has proved the signatures of the Enquiry Officer. Ext. 5 is the xerox copy of hand written enquiry proceeding written by the Enquiry Officer himself. The xerox copy of the signature in Ext. 5 also appears to be similar with Exts. 17/a and 18/a. Since the hand written proceeding of the Enquiry Officer was being written during the enquiry in presence of M. W. 1. in the facts and circumstances of the present case is rather competent to prove the signature of the Enquiry Officer. Therefore, there is absolutely no material on record to entertain the objections of the workman regarding fairness of the domestic enquiry.

On the other hand, the oral evidence of M. W. 1. read with all the documentary evidence proved by the management clearly shows that the enquiry conducted into the charges against the workman by the Enquiry Officer was fair and proper. Therefore, the Issue No. (i) is answered accordingly.

7. Issue Nos. (ii) & (iii) : The charges proved against the workman are grave and serious. There are material on record that previously also the workman had been charge sheeted and he had been warned for misconduct. In answering the Issue No. (i). I have already held that the enquiry into the charges by the Enquiry Officer was fair and proper. Therefore, the action of the management in terminating the services of the workman namely Shri Aruna Kumar Dey, Electrician by any of dismissal with effect from the 18th October 1996 is legal and justified and therefore, the workman is not entitled to any relief whatsoever.

Consequently the reference is answered accordingly.

Dictated and corrected by me.

S. K. MOHAPATRA
29-9-2007
Presiding Officer
Labour Court, Bhubaneswar

S. K. MOHAPATRA
29-9-2007
Presiding Officer
Labour Court, Bhubaneswar

By order of the Governor
K. TRIPATHY
Under-Secretary to Government